

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 6, 2009

IN RE: GRACIE H. AND J'IZAIA H.

**Appeal from the Juvenile Court for McMinn County
No. 24299-J James F. Watson, Judge**

No. E2008-02176-COA-R3-PT - FILED MARCH 5, 2009

The State of Tennessee Department of Children's Services ("DCS") filed a petition seeking to terminate the parental rights of Christina H. ("Mother") to the minor child, Gracie H.¹ The Juvenile Court later granted DCS leave to amend the petition to also terminate Mother's parental rights to the minor child, J'Izaia H.² After a trial, the Juvenile Court found and held, *inter alia*, that clear and convincing evidence existed to terminate Mother's parental rights to Gracie H. under Tenn. Code Ann. §§ 36-1-113(g)(1), (2), (3), and (8) and that termination was in Gracie H.'s best interest. The Juvenile Court also found and held, *inter alia*, that clear and convincing evidence existed to terminate Mother's parental rights to J'Izaia H. under Tenn. Code Ann. § 36-1-113(g)(8) and that termination was in J'Izaia H.'s best interest. Mother appeals the termination of her parental rights to Gracie H. and J'Izaia H. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS P.J., and JOHN W. MCCLARTY, J., joined.

Donald (Trey) Winder, III, Athens, Tennessee for the Appellant, Christina H.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Lindsey O. Appiah, Assistant Attorney General; for the Appellee, State of Tennessee Department of Children's Services.

OPINION

¹The petition also sought to terminate the parental rights of Chuckie H., Gracie H.'s biological father. Chuckie H.'s parental rights to Gracie H. were terminated, and Chuckie H. did not appeal this termination.

²J'Izaia H. has a different biological father than Gracie H. The parental rights of J'Izaia's biological father, Gary H., were terminated, and Gary H. did not appeal this termination.

Background

This case was tried before the Juvenile Court in early 2008. Christy Chadwell, a DCS case manager testified at trial. Ms. Chadwell has been Gracie's case manager since February of 2006. Gracie was taken into State custody in October of 2005 as a result of allegations of physical abuse to Gracie by Mother. Gracie had been hospitalized with a skull fracture, and Mother was indicated for physical abuse. Ms. Chadwell testified that Mother stated she was alone with Gracie at the time of the injury and could give no explanation as to how Gracie was injured. Mother agreed to the dependent and neglect adjudication. The Juvenile Court found clear and convincing evidence supporting the removal of Gracie, and of reasonable efforts by DCS to prevent removal.

Ms. Chadwell testified that Mother reported she was pregnant with twins when she married Gracie's father, that Mother was forced at gunpoint to marry Gracie's father, and that Gracie's father later stabbed Mother resulting in the death of the twins who then were buried. Ms. Chadwell testified that there is no proof supporting the story of the buried twins. Mother also reported that Gracie's father had been in jail for several years, that he was in jail for assaulting and raping Mother, and that Mother was in hiding from him and had taken a new name and new social security number. Mother also reported that Gracie's father had stabbed Mother while Mother was pregnant with Gracie. Ms. Chadwell testified that when reporting that Gracie's father had stabbed her, Mother had used the term 'gutted' her up the back.

A Permanency Plan ("Perm Plan") for Gracie was entered into on October 25, 2005. Under the Perm Plan, Mother was to complete various tasks including maintain a safe, stable home; have a nonthreatening environment; not allow abusive persons into her home; be involved in Gracie H.'s medical appointments; sign releases to allow DCS to obtain records regarding medical and psychiatric assessments on Mother; obtain a parenting assessment and/or psychological evaluation and follow all recommendations; and exhibit parenting skills during visitations. Ms. Chadwell testified that the Perm Plan was revised on March 2, 2006 when Gracie's father came into the picture. At that time, Mother's tasks changed because DCS had the recommendations of Mother's psychological evaluation done by Dr. Thomas Biller. Under the revised Perm Plan, Mother also was to continue individual counseling and provide monthly counseling reports to DCS, take her medication as prescribed to control her psychotic delusions, become stable on her medication for a period of six months, become stable on her medication before taking parenting classes, maintain all doctor and counseling appointments, contact WIC for nutritional information, and allow an assessment of any male present in her life for parenting traits.

On February 3, 2006 a meeting was held at Dr. Biller's office with Mother, her attorney, and DCS to review Dr. Biller's findings and recommendations. Ms. Chadwell testified that in response to Dr. Biller's findings and recommendations:

[Mother] became very upset. She emphatically stated that she would not take medication, that I could come and pick up Gracie's things that night because if it involved taking medication, I could just take the kid, that she was not going to take medication. She had been in counseling since she was six. She had tried every medication there was and nothing helped. She said that she had taken Thorazine,

Neurontin, Geodon, Risperdal, Xanax and everything and she said she had also taken Xanax, Lexapro, Lunesta several times during this meeting and even to her own counsel at that time she refused to take medication.

Ms. Chadwell testified that DCS had regular meetings with Mother. Ms. Chadwell tried on several occasions to talk to Mother about the importance of taking her medications, but Mother “basically told me she would take whatever medication she wanted to take.” Ms. Chadwell also testified that Mother did not attend counseling regularly. Instead, Mother would cancel appointments, and there were long gaps between the appointments that she did keep.

Ms Chadwell also testified that Mother did not maintain a safe and stable home. Ms. Chadwell testified:

[Mother] reported in that first year that she had been involved with Andy Tomac, Lynn Mosier, Josh Burnett, Andy Tomac again, Gary [H.], several different men in a short period of time. Reported each time she was pregnant by each one of them. Most of the men that she associated with had a criminal history.

With regard to Mother’s reports of pregnancies, Ms. Chadwell testified:

October 4th, 2005, she reported she was four months pregnant by Andy Tomac. October 19, 2005, she was pregnant and had had several miscarriages at that point....She continued to report from October of 2005 through January the 10th of 2006 that she was pregnant by Mr. Tomac and going to see doctors in Chattanooga and UT, had failed a stress test, was going to have a C-section on March 7th, 2006, had to go for appointments to see if the baby [was] on the right side because if it was laying on the right side, they had to monitor her more. That continued until January 10th, 2006, when she reported to be seven months along and had a miscarriage at Athens Regional Medical Center in the ER.

DCS obtained medical records from Athens Regional Medical Center that showed that Mother had gone to the ER claiming she was pregnant, that a serum test and an ultrasound showed that Mother was not pregnant, and there was no evidence of a miscarriage. Mother then reported to DCS that the hospital staff had disposed of the baby’s body.

In April of 2006, Mother reported that she was dating a man named Josh Barnett, that she was six weeks pregnant with his baby, and that her psychiatrist had discontinued her medications due to the pregnancy. Medical records showed that Mother was not pregnant at that time. Ms. Chadwell testified that when confronted with the proof that she was not pregnant, Mother insisted that she was pregnant. Ms. Chadwell testified:

[Mother] maintained that she was pregnant until - - actually until July of ’06 when she claimed she was pregnant again....She said that - - that she had miscarried two-and-a-half months ago, did not report this to the case manager, did not report it to her

psychiatrist, did not resume her medication or counseling appointments and then she said she was five weeks pregnant on the 13th of July by another man....Gary [H.].

Mother reported at the time of trial that she was pregnant, but had not provided DCS with any medical record to support this assertion.

Ms. Chadwell testified that Mother "reported she was seeing a police officer in February by the name of Lynn Mosier from Loudon County and then Mr. Barnett in April, Mr. Tomac in May, Mr. [H.] in June." Ms. Chadwell testified that it was important for DCS to investigate the men Mother was involved with because "[i]t's part of Dr. Biller's recommendation that any male in her life be assessed for parenting traits. Also, [Mother] had established a pattern of becoming involved with abusive men who more often than not had criminal histories." Mother reported that she had married Mr. H., J'Izaia's biological father. Ms. Chadwell testified that although Mother reported that she had married Mr. H., no marriage certificate exists for this purported marriage.

In August of 2006, Mother came to the DCS office and reported that she had a new man in her life, Verlin Mason. Ms. Chadwell investigated and discovered that Mr. Mason is a registered sex offender. Ms. Chadwell testified:

[Mother] had reported in a telephone conversation with me before she married Mr. Mason that there could be a problem, that Mr. Mason's twin brother was listed on the sex offender registry and I asked her a series of questions of what's the date of birth, is the social security number the same, you know -- you know, do you really believe this is his twin brother. She told me she had gone to the library and looked up the picture, seen the picture of him and she said, yeah, she believed it was his twin brother, he had died. He had been hit by a transfer truck which made him dead and that his name was -- she didn't clarify Verlin one or Verlin two. They were identical brothers....Actually, she told me the other day that the father's name was Verlin and they are actually Verlin one, two and three.

Ms. Chadwell testified that she talked to Mother about Mother's association with Mr. Mason and stated:

When [Mother] first contacted me and said there might be a problem because it looked like him and it was his twin brother and I talked to her about do you think this is this man and I asked [Mother] if he -- if this man was on the sex offender registry, you know, what is your intention and she didn't say anything. And I said, you know, this would be a very big problem for you if you invite this person into your life and it might come to the point where you would have to make a decision based on the safety and well-being of your children and she said she had every intention of doing what was right for her children and if it came to that, she would not associate with Mr. Mason and then she married him.

Mother provided DCS with a copy of a marriage certificate dated October 25, 2007 showing that Mother and Mr. Mason were married. Prior to the marriage, Ms. Chadwell met with Mother to discuss the situation and during that meeting:

[Mother reported that]Mr. Mason had sex with a 14-year-old girl and impregnated her. He now has a child by that girl and he said - - she said he had worked all this out with the baby's momma, so it wasn't anything to be concerned about and she said - - she indicated this just wasn't relevant to whether or not her children were with her. She simply did not see any relevance whatsoever.

Ms. Chadwell testified:

[Mother's] reported on several occasions that [Mr. Mason's] been taken off the sex offender registry. She brought a letter to me where he had requested to be taken from the sex offender registry and just this month, I believe, brought another letter showing where the TBI was considering his request, but she said that that showed he had been taken off of it and that if I said anything else about it, she would sue me.

Ms. Chadwell verified that as of the day of the trial, Mr. Mason still was listed on the sex offender registry.

Ms. Chadwell also had concerns about the safety and stability of Mother's home due to smoking in Mother's home and Gracie H.'s asthma, and due to reports of other people living with Mother. Ms. Chadwell testified: "[Mother] had reportedly lots of teenagers at her home at one time. Andrew Nunley was a 19-year-old male that she said she was going to adopt and his girlfriend," and Mother reported that they were living with her. Mother also reported several anticipated changes of residence during 2006. Ms. Chadwell testified:

[Mother] reported in June of 2006 that she was buying a home from her friend who was dying of cancer and that she and Mr. Nunley and Ms. Gorley and Mr. [H.] were all going to live there together and raise their children together. She reported - - oh, yeah. She reported again in July that she was closing on a home that day and it was going to be a four-bedroom home. She was moving in with Mr. [H.]. And she reported, again, in July, a couple of weeks later that she was buying a home. And then in May of 2007, she said she was buying a home from Mr. Letner, Scott that she had said before was dying of cancer, but she said he didn't die and he was going to let her live with him, buy the home.

However, Mother never moved any of these reported times.

Mother alleged that the foster parents were abusing Gracie. Ms. Chadwell investigated these allegations and found them unsupported. Mother also alleged that the foster mother was going to be arrested for taking pornographic photos of Gracie and was going to be put in jail. Ms. Chadwell found these allegations to be unsupported as well and has never seen any such alleged photos.

Ms. Chadwell testified that by the end of 2006, there had been no change in Mother's circumstances, she was noncompliant with the revised Perm Plan, refused to take her medication consistently, and was not attending counseling consistently. A new Perm Plan was entered into on February 20, 2007 with dual goals of reunification or adoption.

Ms. Chadwell testified that Mother graduated high school with a special education diploma. Ms. Chadwell knows Mother can read because Mother has correctly read documents aloud to Ms. Chadwell on occasion.

Ms. Chadwell testified that she has supervised numerous visitations between Mother and Gracie. Ms. Chadwell testified that Mother "does not appear to be able to read the child's cues" and explained by stating that Mother would not know what Gracie needed when Gracie cried, that Mother would continue to try to feed Gracie even when Gracie would spit out food or by gestures indicate that she was not hungry, that Mother had problems changing diapers when Gracie would wiggle or squirm, and that Mother expected Gracie to be able to count and write her ABCs with paper and pen even though Gracie was not yet three years old. Ms. Chadwell also testified regarding an incident during a visitation when Gracie began to throw a temper tantrum and Mother did not know what to do. Ms. Chadwell testified that she had to step in and assist Mother in putting Gracie in time-out.

DCS began therapeutic visitations in June of 2007, having a visitation specialist meet with Mother during visitations to teach and assist with parenting, discipline, feeding, etc. Ms. Chadwell testified:

In the therapeutic visitation that's been provided, I have not seen [Mother] be very cooperative with the therapeutic visitation specialist. Often she has left the room saying that she's being unfairly treated, she's not going to listen to her, has said she doesn't want the therapeutic visitation specialist present anymore.

Mother did provide DCS with proof that she had attended parenting classes at Full Circle Women's Center. However, when asked if there has been any improvement in Mother's parenting skills, Ms. Chadwell testified: "No. Through my observations, it has been rather consistent that she does not understand age appropriate development for the children, that she has difficulty attending to the child. She loses focus very easily. She doesn't really understand play.... Her main focus is really just feed and diaper." Ms. Chadwell also testified that she has seen Mother become frustrated with the children during visitations and stated:

We had one incident where [Mother] did not handle the visit very well. She would get gruff with Gracie because Gracie was irritable. She was fussy and crying because it was about naptime and she would clench her jaws and finally would just sit Gracie in the floor and say go play, you know, very dismissive of her. That visit was when I decided to change the time of the visit to the mornings, so it wouldn't interfere with the child's naptime and it would be probably a better fit for her and the mother and help the visits go better.

When asked how Mother's frustration manifests, Ms. Chadwell testified: "She becomes very flustered. She will - - she gets very disorganized, has a lot of difficulty in her visits now with - - with the two children there, has a lot of difficulty managing both children and she just appears overwhelmed and often unsure of what to do."

When asked what DCS has done to assist Mother, Ms. Chadwell testified:

We provided weekly visitations for the mother. We provided therapeutic visitations for [Mother]. I have transported her to several doctor's appointments in Knoxville with Gracie so that she can be educated to her medical conditions. We have - - the Department - - she had the parenting and psychological evaluation with Dr. Biller and that was paid for by the Department. I have tried to encourage [Mother] to complete her tasks on the permanency plans. We've had regular meetings to discuss her progress on the permanency plans. I tried to work with other treating professionals on her case so that all the professionals would be aware of what steps and goals [Mother] needed to achieve in order to make reunification possible.

Ms. Chadwell testified that she attempted to work with Brenda Hartgrove, one of Mother's counselors, by setting up a meeting with Mother to review the Perm Plan. Ms. Chadwell testified that "Ms. Hartgrove thought this would be a good way for [Mother] to remain focused on her tasks, but [Mother] refused to do that and said she would not attend if I was there." Ms. Chadwell testified that she met with Dr. Zemichael, Mother, and Mother's attorney on two occasions to discuss what needed to be done to facilitate reunification of Mother with the Children. During the first meeting, Dr. Zemichael stated that most of Mother's medications had been discontinued due to her reported pregnancy. Mother was not pregnant at that time. Ms. Chadwell testified:

[Mother] had stated that she was pregnant and was not medication compliant. I met with [Mother] and Dr. Zemichael. In July of that - - of '06, she had stated at a child and family team meeting that she had miscarried and hadn't been medication compliant in the two-and-half - - you know, in that interim before she claimed to be pregnant again. Shared with Dr. Zemichael that, you know, there were no pregnancies and we would, you know, encourage [Mother] to complete her plan. [Mother] refused to take medication. He asked her if she would take Trileptal and she said no, said it made her sleep, she couldn't function, she didn't want to take it, that her family did not want her on medication and she was seven weeks pregnant and she couldn't take medication. And Dr. Zemichael said that according to the blood test that she wasn't, but she, again, insisted that she was. He offered many different medication options for her and she refused. [Dr. Zemichael] asked her if she wanted to go inpatient for a couple of days to become stabilized and she refused.

Ms. Chadwell testified that when Gracie first entered custody, she had several health issues including:

Failure to thrive. She had been diagnosed with that when she first entered, respiratory problems, acid reflux. She was in occupational therapy for a while, wore

leg braces for a while, was seen by Dr. Winestein, Dr. Rogers, Dr. Altawill, Dr. Sagi. We had several doctors involved. Right now she's currently not wearing braces. She'll be reevaluated in a couple of months....She walked on her tiptoes. She wouldn't walk flat on her feet. She had polyps on her bronchials, bronchial tubes. These were removed. She just had a bronchoscope on the 11th of January and those are gone, no more problems with asthma or vomiting or any of those things.

Despite what Mother claims, Gracie has never had cancer nor has she had part of her lung removed. Ms. Chadwell testified that Gracie is developmentally on target. Gracie had an appointment with Dr. Winestein when she came into custody, but Mother did not follow up with this appointment. Gracie also had been referred to Tennessee Early Intervention System, which works with children up to three years old who may have developmental delays, but again Mother did not follow up with this referral. Ms. Chadwell testified that she believes it is in Gracie's best interest for Mother's parental rights to be terminated because:

There's been no change in the circumstances since Gracie entered custody. [Mother] has shown a pattern of behavior of entering into relationships with several different persons. Of these - - you know, very quickly with men who have criminal histories, drug issues or abusive, reports being abused by these men. I have concerns that if [Mother] can't protect herself from abusive relationships, how she could be protective for Gracie. She hasn't displayed parenting skills necessary to raise an emotionally well-adjusted healthy child.

[Mother] has a long history of mental instability and mental illness. She reported over 20 suicide attempts. She's not been compliant with counseling or medications. She refuses to take medications which could help her mental condition and Gracie has been in custody for most of her life and she needs stability. She needs permanency.

Deanna Cookston, a parent aid with FamilyMenders, testified at trial. Ms. Cookston teaches parenting classes, alcohol and drug classes, and anger management classes, and also does therapeutic visits and case management. Ms. Cookston began doing therapeutic visitations in this case in May of 2007. Ms. Cookston attended approximately thirty visits between Mother and Gracie, which occurred once a week for two hours each. With regard to the visits, Ms. Cookston testified:

I think the biggest thing that really started to come to my attention was the lack of bonding....[Mother] would come to the visit. Like she would be on time and she would come and she would sometimes bring stuff for the children, which was great, but she spent a lot of time focusing on little bitty details like changing the diaper was a very big issue for her, feeding them. Even if they weren't hungry, it was very important that she feed them. It became really a big issue because the more that that was concentrated on, the less bonding interaction she actually had with Gracie. And I would try to point out to her how she could do that, you know, like getting in the floor and playing with her and she would initiate it. She would get in the floor and

she would get out stuff to play and maybe for a minute or two, usually no more than five, she would try to kind of play with Gracie, but after that, she would stop. So the actual bonding experience that you get when you sit down in the floor with your child and you interact just - - it didn't develop as I had expected.

Ms. Cookston testified that there were a few visits with just Mother and Gracie, but most of the visits involved Mother and both Gracie and J'Izaia. With regard to Mother and Gracie during visits, Ms. Cookston testified:

Well, there was obviously toys in the room, so there might be toys that she would pull out. There were puzzles that, you know, Gracie liked to play with. When we first started, Gracie was still, as I understand it, going through therapy, the cognitive skills therapy and so [Mother] brought these little toys and you pull them apart and you push them together. She interacted with that with Gracie probably more than most anything she did and that was in the very beginning. So they would do the little - - I'm not really sure what they're called. They're little plastic things. You put them together, you pull them apart. She brought crayons and coloring books and papers and stuff to write on and she would get it out for Gracie and she would sit it out on the floor and she would sit beside her and she would be like, okay, Gracie, let's color, but she wouldn't color with her. She wouldn't encourage her. She wouldn't talk to her about, okay, this is yellow or this is - - this crayon is red, let's color a picture. She sat there and Gracie colored.

Ms. Cookston testified that during the two hour visitations, Mother would spend approximately fifteen minutes playing with Gracie and approximately thirty to forty-five minutes interacting. Ms. Cookston stated, "and when I talk about interacting issues, she's still talking to her."

When asked what instruction she gave Mother during visitations, Ms. Cookston testified "it was very difficult to do" and further explained:

Well, I started out with, you know, the technique which I normally use, which is I would observe a visit and either at the end or the beginning, I would say, okay, this is what's working and this is what you need to do different and that didn't seem to work because the things that I would suggest be changed weren't being changed....Gracie had this real big habit of leaving the room. She would just leave. She would just wander off down the hall, which you could see her if you were in a certain position, but you couldn't if you were inside the room and [Mother] would just kind of sit there, you know. She would say, Gracie, come back. Well, Gracie wouldn't come back, so, you know, she would wait a few minutes and then she would go get her. But there was a time frame where Gracie was, you know, wandering in this little hallway. So my idea was for her to block the door because we couldn't shut the door. It got really, really hot. So we would block the door with a chair so Gracie couldn't get out.

I probably asked her to do that - - within four visits in one month, I asked her to do it every - - at the beginning of every visit. It took her a month to do it on her own. Every time we would go, I would have to point it out to her, make sure you block the door, so it wasn't something she was doing on her own. You know, because I recommended it and you expect to see this pattern. It didn't happen. I would have to help her. I would have to point out, you need to block the door so Gracie can't get out.

Other things - - trying to interact with her, the bonding, you know, I would tell her, get in the floor and play with Gracie. You know, I would - - you know, and she would get in the floor, but she wouldn't actually play with Gracie. Again, she would start. She would get the little paper or pens or whatever they were going to play, but then she wouldn't play with her. So I continued to try to encourage her to do that. It just never seemed to work. You know, it got to the point where I realized me telling her and encouraging her to do it wasn't working. So then I had to come up with a different technique on how I was going to provide her with parenting skills.

At that point, I decided to actually teach by example. So instead of saying, you know, let's get in the floor and play with Gracie, I would get in the floor and start playing with Gracie and show her, you know, this is how we do it. Now, I didn't say that. I was just trying to let her absorb what I was doing and hopefully she would pick it up....Again, this was the same pattern. She would for a few minutes and then she would stop and her focus would go somewhere else and it just - - it became like - - well, sometimes - - and I started trying to tell her, okay, this isn't working, try to do this and she would get angry. She would get angry. Well, she appeared to get angry with me....She would get short the way she talked. She would kind of get huffy and say like I know or I can do it or I've done it before. And I would be like, okay, I just need to see you doing it. It became where it was always like that. I couldn't really guide her because she would get so agitated, you know, that she just wouldn't listen to me.

Ms. Cookston also testified:

[Mother] places a lot of emphasis, again, on feeding her children and making sure they have clean diapers. It's very basic. Her ability to discipline is - - it's very difficult for her. She has a hard time following through. If Gracie presents any front, then she gives up and there are times when she appears to be very irrational. She'll say things that just totally, you know, just - - are just totally irrational....She's made several claims that the judge was her cousin and he was going to take care of her, she didn't have any concerns about what was going to happen in court. She made statements like J'Izaia [H.] was not [Mr. H.'s] child, but that he was her then boyfriend, Mr. Mason, which was obviously very concerning because J'Izaia was obviously African-American and Mr. Mason was not....At one point, we were going to have a family-team meeting and she told us that her parents had gotten custody of Gracie and J'Izaia through the courts in Nashville and she was just waiting for them

to come and pick them up and we were like, are you sure, because we don't know anything about that and she was just adamant that that was the case.

Ms. Cookston further testified:

If something was said to [Mother] that she - - well, when I pointed out, you know, what she was doing and she would need to do it differently and she would get very agitated. She would say, I know, and she would start to talk about, well, this is going to happen and this is going to happen, and you know, for - - well, one episode was she was saying that, you know, the judge was her cousin and she didn't have to worry about court and I was trying to explain to her, you know, well, you need to do this while you're in your visit, this is your visit. That's all we need to deal with. And she was ignoring Gracie and J'Izaia completely and J'Izaia was sitting up and he fell over and bumped his head, which it didn't hurt him, but it was a real pattern when she would become - - appear to be agitated that she would almost just forget that they were there and she would just focus on how she felt.

When asked if she had concerns about the children's safety, Ms. Cookston testified:

When [Mother] appears to be irrational, she tends to not think about them. She doesn't pay attention enough to them. There have been several times when - - if - - you know, like I said, one instance was we were having a visit and the caseworker, Ms. Chadwell came in. It was towards the end of the visit to see how things were going and she mentioned some paper, I think, that [Mother] needed to sign and [Mother] got very agitated or appeared to be and wasn't paying any attention to Gracie and J'Izaia and I looked over and J'Izaia was putting a piece of wood in his mouth like a little toy. He was chewing on it. You know, and, of course, that's obviously very concerning because he could have strangled or choked, but it was not her focus. Her focus was it appeared to be that I'm very agitated about what's being said and this is about me.

Ms. Cookston further testified:

Gracie is almost three, so if you study child development, you know that this is a time for her imagination to take off and it has been. Gracie was playing and she saw a picture of a wolf and so she's actually been watching on TV, so I was told, she's been watching, you know, the three little pigs. So somehow she saw the wolf, and she started thinking about the three little pigs and so I'm trying to, you know, help her with her imagination and so we start talking about the three little pigs and the big bad wolf and it escalates into this huge battle with [Mother]....[Mother] thought that we were saying that she was the big bad wolf. She became very defensive and actually said, no, I'm not the big bad wolf, Debbie is. Debbie is trying to take you away from me. She told this to Gracie. Gracie is three. It's totally not appropriate and so I told her you cannot say things like that, it's not appropriate, not to a three-year-old. It's just not appropriate. And, of course, again, she appeared to

be very agitated, very irrational. Her face got really red. She just looked very upset. She was like, I don't know why I can't tell my children the truth and started to get tears in her eyes and I'm like it's not about the truth. What matters is that - - Gracie is three. It's not a discussion you need to have with a three-year-old.

She got very upset then and got up, was leaving the room because I was mean and I wouldn't let her be honest with her children and she was going to tell and I said, okay, you can go tell. And the whole time she's starting to cry and she's starting to curse and Gracie is very upset. You know, the whole time Gracie is like what's wrong with mommy, why is mommy crying. [Mother] never once looked at Gracie, never once said, I'm okay. Never once tried to comfort Gracie. That fell on me. Gracie came wanting to know and I had to comfort her and that was very concerning....[Gracie] continued to say why is mommy crying. When [Mother] came back into the room, it was under the order that she would calm down and finish her visit. When she came back in, she was still crying and Gracie walked over her to [sic] mom and wanted to know what's wrong and she said, I'm sad. And Gracie said, well, Anna - - Gracie calls me Anna. She said you have a boo boo, that's why you're crying. She's like, no, I'm sad. And Gracie is three and she's wiping the tears off her mother's face. So Gracie's emotional needs were not being met. [Mother] was focusing on her own needs. It was very distressing for Gracie.

Brenda Hartgrove Thomas, a psychotherapist with Restoration Counseling Services, counseled Mother on February 21, 2006. Ms. Thomas testified that she was to work with Mother to complete tasks on the Perm Plan. Ms. Thomas, however, only saw Mother one other time on May 12, 2006. In total, Ms. Thomas saw Mother for only two hours. Ms. Thomas diagnosed Mother with bipolar disorder based mostly on the information given to her by Mother. Ms. Thomas testified that Mother probably would need therapeutic counseling on a long-term basis probably off and on especially during stressful times. Ms. Thomas testified:

Well, based on what I read from the other people that I got information from, from the Billers [sic] and then from [Mother's] own past, the history that she gave me, it seemed like, you know, when she's stressed out, she doesn't cope well. So I think in life we're going to have stressful situations. So when she's under stress, if she had a go-to person, a professional provider with counseling, if she had medication that could be on board already, that it would be helpful to her to cope with those situations.

When asked if a patient who was not on a medication regimen still would benefit from talk therapy, Ms. Thomas testified:

Yes. I think they could still benefit from the talk therapy because at some point, you know, if you're in talk therapy, there may be some rationalization about the medication, someone - - you know, a light could go on and you might be willing to reassess your situation or you're at least gaining coping strategies along the way that

would assist you in trying different ways to manage stress or to help with other stressful matters that come up in just everyday life.

Ms. Thomas testified:

[A]s any parent knows, children come with stress and stress with any mental illness is going to aggravate the symptoms, so you've got - - with bipolar, you've got irritability, depression, the possibility of suicidal thoughts. You've got the possibility of - - in your irritability, rages. These are possibilities. You know, they may never happen, but they are possibilities, so those are the risks.

Debra Taylor Grant, a licensed professional counselor with Day Star Counseling, testified at trial. Ms. Grant was licensed in 2006. She has been with Day Star as an employee since 2004 and, before that, did an internship with Day Star in 2003 while she was in graduate school. Mother was assigned to Ms. Grant during Ms. Grant's internship. Mother had been referred to Day Star through the Hope Center due to domestic violence. Ms. Grant worked with Mother "on domestic violence issues and interpersonal issues as far as getting along with the support systems that were in her life and boundary issues...."

Ms. Grant testified that during the intake appointment, Mother reported:

[S]he was pregnant at the time. She was in the Hope Center for domestic assault reasons. She had been in there. I have on here five to six days she had been there. Had a history of physical abuse. All past relationships, from what she states, were abusive and she was trying to reestablish her life. She was pregnant at the time. She also had told me that she had seen her doctor that day and that she had lost one of the twins that she was pregnant with, but was still pregnant....She told me she had been in counseling off and on since she was a child. She said she had been suicidal in the past and had made 25 suicide attempts. She had been in and out of the hospital, Moccasin Bend, Nashville and a few other places that she could not necessarily tell me where they were at the time, but there was a long history of psychiatric involvement with her.

Mother told Ms. Grant that this was her ninth pregnancy. Ms. Grant also testified:

She told me that she had had a history of eating disorders. She told me that she was diabetic. She told me that she had seizures and she had chronic bronchitis. She told me she had had a left lung removed or a lung removed. Okay. Let's put it that way. And that's pretty much what all comes to mind. I know she had had a history of substance use that she had, you know, been treated for and at one point had told me that she had managed to get - - you know, clean herself up and get herself off of it, which is pretty admirable if she was able to do that.

Mother also told Ms. Grant:

she had been married to a Russell Love. I don't have the date on here, that she told me was executed in the Illinois State Penitentiary two months ago for murder one and that would have been October - - that would have taken it back to what, August. And her second marriage was to a man called Chuckie [H.] who was abusive, which is the one that I assume she was trying to get away from that was the father of the baby. Drugs and alcohol, legal problems, but those were the only two marriages that I was aware of.

Ms. Grant further testified:

She told me she had had seven mismarriages [sic]. There was a child by the name of Kevin Michael that was her first live birth, age five that was with an adoptive parent in Nashville, which is kind of a contradiction because it says adopted mom in Nashville and then it says temporary custody, so - -

Ms. Grant also testified:

She reports on here no knowledge of her biological parents. She's the oldest of 12 children, raised in state custody, Minnesota and Tennessee. Not really. Let's see, and there's a notation here, son's father shot himself in front of patient, was killed from injury, both were high on drugs at the time.

Ms. Grant testified:

I felt like her social skills were poor. She had very little, if any, support system. When I say little support system, I'm talking about a personal support. There was a lot of agencies involved. The Hope Center is very, very effective and they were providing a lot of services for her and she had a doctor. She had - - at that time when I did this intake, she had told me about a mother, an adopted mother that was in her life, a Maggie Newman, I believe is what her name was. I was never - - I didn't verify any of that. I didn't have any way to, but I felt like she needed to work on self esteem issues, boundary issues, relationship issues, how to potentially prevent some of this ongoing behavior, you know, that was causing so many problems in her life and to get along with the services that were being provided for her....There was - - there were some times when she presented in my office upset with the doctor's office and the doctor and the people over there and I don't remember the exact specifics of what she was upset about, but she would - - at that point, she was out of the - out of the shelter and she would walk past our office over to the doctor's office and quite often stop back in and she would - - she was upset with them on several occasions, sometimes that she talked to me about in session and I was trying to get her to realize that you're going to need these people at one of the difficult times in your life and let's listen to what they're saying and let's let them help you.

Ms. Grant counseled Mother on a reasonably regular basis for around eight months. Ms. Grant saw Mother about once a week, sometimes twice a week. Although Mother did not show

for some appointments and was late for some others, she attended most of the scheduled appointments. Mother voluntarily quit counseling with Ms. Grant.

When asked if she felt Mother had received any benefit from the counseling that Ms. Grant provided, Ms. Grant testified:

Say as of June 2nd, the last time I saw her in my office, I was very concerned because she was not getting along with the services in her life and I knew she was going to have to have that. I was just - - there was a lot of things I was becoming concerned about and at that point, no, I did not feel like I had benefited [sic] her.

When asked if Mother exhibited any delusional behaviors, Ms. Grant testified:

Well, delusions, believing things that are not there or not real. I became concerned about a lot of these stories she was telling me because there was one afternoon The Hope Center brought her to my office and she was concerned that the baby had been just stung by a bee and this little baby was like this big. I mean, it was a little tiny, cute, little baby.... Gracie, yes. There was no evidence that that child had been stung by a bee.

Ms. Grant also testified that when Gracie was approximately six months old, Mother told Ms. Grant during a telephone conversation that Gracie was walking and teething.

Angela King, a case manager with Hiwassee Mental Health also known as Volunteer Behavioral Health Services, testified that she worked with Mother for over a year. Ms. King described her job stating: "We basically go into the home to check on the client, to see how they're doing. We talk to them, listen if they need to talk. We try to get services that they need such as SETHRA, you know, just whatever services they might need for assistance." Ms. King tries to see Mother at least twice a month at Mother's home.

Mother told Ms. King that her boyfriend, Mr. [H.], had brain cancer and that Mother had to rush him to the hospital because he was bleeding from his nose and mouth. Mother also told Ms. King that Gracie had to have emergency surgery and have her left lung removed because she had lung cancer. Ms. King also testified that her notes state:

Client stated she has talked to adoptive mom about adopting her children and mom stated she would try if client is not able to get custody of them. Client stated she was going to be moving to Riceville, but is not sure when. Client states she inherited a trust fund from a grandmother and her parents took the money and bought her a home in Riceville. Client stated she is waiting for the paperwork concerning the home....She went for a visit with her kids on Monday and her ex-spouse and son's dad was present during visit. Client stated she didn't know ex-spouse was going to be there. Client stated - - client and boyfriend stated this was ex-spouse's last visit with her daughter because he is soon to be executed. Client discussed meeting with DCS, stating it didn't go well. Client stated DCS continues to give her a hard time.

Client stated her new boyfriend was a registered sex offender, but charges were dismissed. Boyfriend stated charges were dismissed because it was considered consensual. Boyfriend stated the girl's parents allowed him to live with them, although she was a minor.

Ms. King testified that her notes from another visit with Mother state:

Client stated she was happy and had good news. Client stated she went to court this morning concerning children. Spouse and a female friend of client's was present during visit. Client stated judge awarded her custody of her children. Client stated both children are in the hospital now because of ear and throat infections and will be placed in her custody once they are released.

Client stated her lawyer was present and another DCS CM testified on her behalf. Client stated CM involved with her case and the foster parent were escorted from courtroom by security because of confrontation with judge. Spouse stated client was awarded custody. Spouse stated he has been working two jobs to take care of client so she won't have to work if she receives custody. Client was manicuring friend's nails during visit. Client stated she had attended cosmetic classes, but never received her certificate because she quit. Client stated she is thinking about going back to get licensed because friend stated she could get a job at her place of employment as a manicurist.

Barbara Mayer, a foster care case manager with DCS, was the case manager for both Gracie and J'Izaia at the time of trial. Ms. Mayer testified she made a home visit to the home where Mother and Mr. Mason live and stated:

It's in a trailer park. All the trailers looked alike, so I assumed it was some type of government trailers at one time. I don't know if they are now. Mr. Mason and [Mother] informed me that they were buying the trailer and that their lot rent was \$120 a month and that's all they had to pay. I walked up to the steps and this day was a particularly hot day. As I like to say, about 200 degrees and I noticed the dogs were outside on chains, one on either side of the porch and neither of them had shade or water and I commented on that to the Masons. I was informed that they had ordered doghouses that were coming.

When I knocked on the door, I noticed that the door was not a secure door. In other words, if you went to close the door, it would open back up. It wasn't latching. The way that they secure their front door is with a padlock on the outside. I really don't know if they do on the inside, but there was a padlock on the outside.

When you step into the home, it's a living room, kitchen combination kind of thing with a bedroom on either end. The living room floor - - okay. I'm a short, chunky woman, but I did not feel secure that it would support weight. It creaked and you could tell there were soft spaces. They informed me they had ordered wood that

was on the way. Ms. Mason was sitting at the table and she was sick that day, I remember. She looked like she had a fever. She was, you know, kind of clammy looking and I asked if she was okay because she was very pregnant at the time and I asked if she had been to see her doctor. She wouldn't give me any information because the Court had ordered me not to. Then I looked at her bedroom and it had - - her bedroom had a bed for her and Mr. Mason and there was boxes and boxes of stuff in what was going to be the children's bedroom. There was - - you couldn't turn around in it. There was boxes and boxes of stuff and I was informed of the boxes being full of like 200 porcelain dolls, 200 stuffed animals, something like this by both of them and that's when I asked is this the home that you intend to bring your two children home to and your third child that she was carrying and they said yes and then Mr. Mason said and my daughter, son, child. I don't know. The child that he had had previously, that they were going to add onto that trailer and were getting the building permit that week, waiting for it to be approved.

They had talked about replacing cabinets. Pretty basically this was a very unsafe physical home. It was unkempt and I did not stay long for two reasons. Number one, [Mother] ... was sick and I didn't want to - - I have small children and I didn't want to take that home. Number two, my eyes were actually burning due to the noxious odor of the home.... Well, I can tell you it wasn't like food like cooking onions or something. This was an odor that seemed to permeate from the home. I've been in homes that have just dirty or roaches or feces or things like that. It was more like that type of a noxious odor maybe with an ammonia based kind of noxious odor. I'm not sure. It burned my eyes. I didn't want to stay.... Gracie, since her birth, has had severe problems, breathing problems. She has been hospitalized on more than one occasion in an oxygen tent. I've personally ... I visited her at the hospital and saw what that child went through just to try to gain a breath. In this type of environment, although I am not a doctor, as it was tough for me to breathe and I don't have a breathing problem, I would imagine it would adversely affect her.

Ms. Mayer also testified:

[E]ven though [Mother] at the time was advised that her then fiancé was a convicted sex abuser and on the sex offender registry, I personally had that conversation with her during the visitation even though I was not her case manager and showed her the printout that we're able to get. She maintained when we told her that that was really - - her husband's name is Verlin Mason and she said that was his twin brother, Verlin Mason and that he had died a year before and they both had the same name and the twin brother was the sex offender, not her intended fiancé and we said, no, it's not, this is your fiancé and she refused to believe that. And we informed her at the time that should you have a sex offender in your home, according to the permanency plan, you know, that's violating it and she said it will be taken care of and that wasn't him and went on.

He also has some other issues. I have another client that he's a friend of. When CPS went to this other client's house, Mr. Mason was actually there partaking of drugs with that client, so I know that he is a drug user.

When asked how Mother has done with visitation, Ms. Mayer testified:

Well, the last visitation is a good example, I believe. Both children were there. They have not been for all visitations. J'Izaia was sick once, but to see her with both of the children is the best example. The last visitation I observed, the two children she had in a - - you know, a chair on casters, what we call a rolling chair and Gracie was sitting like this and J'Izaia was like between her legs in the rolling chair. It has arms. And she was rolling it around a space maybe about this big, giving the kids a ride and at one point she stopped and had her camera phone that she was trying to take pictures of. Well, when she stopped, of course - - they call him JJ. J'Izaia started headbutting his sister like this and she didn't try to stop and Gracie was screaming and crying and she kept saying smile, smile. Well, the next thing you know, either he fell or he was pushed off by his sister for headbutting him [sic] and instead of, you know, number one, trying to stop the headbutting, number two, telling him to stop the headbutting or going to her child when he fell off and was crying, she told him to get back up on the chair. Well, he couldn't. I mean, that chair is too high for him to physically crawl up and so he went over to the door. He does walk. He went over to the door and he started headbutting the door and she was still trying to take a picture of Gracie.

So I left the visitation - - the observation room and came in and she said that he was mad and I said, yes, but he's hurting himself and you didn't do anything about him headbutting his sister and she really had no answer for that. That's kind of typical in that there were safety issues that could have been addressed. There were unrealistic expectations for her children in their behaviors with each other and, you know, that he couldn't climb back into a chair.

Ms. Mayer testified that she observed fifteen or twenty visits in whole or in part and that she has not observed any differences in Mother's parenting skills over time. Ms. Mayer further stated:

No, and that's really curious because we've given her lots of therapeutic visitation people to work with, different ones as a matter of fact. The FamilyMenders one said she couldn't make any headway when I came on the case. She's also been to - - okay. Let me get it right, Full Circle. ...But she had been through all of their courses and so, you know, you would think that with all this knowledge and training and help given her, that she would have made some kind of progress, but I really didn't see any. I still didn't then, don't now feel that the children, either or both of them would be safe in [Mother's] care.

Ms. Mayer testified that she met with Mother to do an intake for the functional assessment when Gracie first came into custody. Typically, an intake such as this would last

approximately fifteen minutes, but in Mother's case it took well over an hour. Ms. Mayer testified that because things Mother was reporting were not adding up, Ms. Mayer did a genogram and a time line, with particular emphasis in Mother's case to her relationships with different men. Ms. Mayer testified:

In this case, I made it to have in my mind she had mentioned numerous gentlemen, numerous pregnancies, different marriages and I wanted to get them straight to see how they were going, how that laid out in her life. By the end of making both of these, she reported - - now, of course, I did not verify any of this. This is all self-reporting on the part of [Mother] at the time, that she had been with a gentleman named John and reported three miscarriages, that she had been married to Russell and reported two miscarriages, that she had been with a gentleman named Kevin and had a seven-year-old son named Kevin and this was, you know, two years ago. They were not married and Kevin killed - - reportedly killed himself in front of her.

She also reported being with Mr. Chuckie [H.] and said that she had carried twins and miscarried with him and then had Gracie and then at the time that I wrote this, which was right after Gracie came into custody, she told me she was five months pregnant by a gentleman named Andrew. So in that amount of time, that was a reported nine pregnancies including Gracie. Of course, J'Izaia hadn't been born yet. And when I plotted all this out, I found - - she reported that the seven-year-old was living with relatives and that she had been abused since the age of two by her father, stepfather and what I found very interesting is there was many mentions of twins. You know, a twin brother here or there. At one time she told me she was, a twin miscarried here and there and since Gracie came into custody, she has reported on more than one occasion, she has miscarried twins and, of course, she reported that Mr. Verlin Mason is a twin, so I'm not exactly sure, you know, what that is. That's kind of strange to me.

Ms. Mayer believes that it is in both of the children's best interest for Mother's rights to be terminated. Ms. Mayer stated:

I do not believe that someone whose thinking is that far skewed from the norm has the capacity to understand and demonstrate appropriate parenting skills in keeping their children safe from potential sex predators and perpetrators of domestic violence as well as her own ability to keep potential medications for the children in line. She doesn't take them herself. Why should we believe that she would have her children do this. The children, Gracie especially does have some medical problems and with her breathing thing, that's probably going to recur. So I don't think that that would be in the best interest of the children.

The children - - Gracie has not lived with her mother since she was eight months old and although she knows that that is her, as she calls her, her other mother Christina, she is very bonded to her brother and to the home she's in where she has

been kept safe, where she has been given discipline, where she has been having appropriate parental supervision and teachings.

I think it would be a great travesty and a great emotional harm to this child to be given - - custody of this child to be given to her mother and removed from the home that has kept her safe for this long a period of time.

Ms. Mayer also testified that Gracie requires a smoke free environment, and Mother smokes.

Annie Ackaouy is a DCS foster care worker who has worked on both Gracie's and J'Izaia's cases. Ms. Ackaouy testified that she has met with Mother, has been involved in child and family team meetings, and was assigned the case while Ms. Mayer was out on sick leave. Ms. Ackaouy testified:

I met with [Mother] once back in, was it, 2006. She told me that Gary [H.] was by golly not the father. It was Josh Barnett, swore to it, said she had papers that swore that he was 99 percent the dad. Told me she was on the run from Gary [H.] because he was attacking her, just little stuff, but it's always an accusation against somebody. In the last staff meeting we had, she was telling me that she had been pregnant with twins, one had passed, but she was still carrying it. She told me that her uncle had moved down from Nashville to help her with the children and do everything. I never met him. He was invited to the child and family team meeting through [Mother], but he wasn't really mentioned again after I went and saw her house.

Ms. Ackaouy testified about concerns she had regarding Mother's house stating:

She had made a beautiful garden out front because she said Gracie loves flowers. There was a nice little walkway up front. She had three dogs that were chained up. They were puppies. The front door apparently looked like it had been kicked in. The door frame was broken. She had a key lock attached to it like a - - just a combination kind of lock thing. The flooring was up. The house had a horrible odor to it. She said the previous owner had had 15 cats. You could see stains along the floor. The wallpaper was coming down. The children's bedroom was crammed full of children's stuff. The light was hanging by a wire. The bathroom was moldy. The floor was coming up. There was a lot of work that needed to be done.

Master bedroom had holes in the wall, wires coming out, pipes all along the way and the master bedroom was extremely crowded. There wasn't a whole lot of walking room. They were doing laundry that day, so there was laundry on the floor. She did have a washer and dryer. She had food there and then her neighbor was going to give her some stairs to put in the back of the trailer. No big safety hazards on the outside of the trailer, but the inside was horrible. But she was praised for smoking outside because there was an ash tray with cigarettes outside. I thanked her for that.

Debra Tilley is the foster mom to both Gracie and J'Izaia. Ms. Tilley has been the foster mom for Gracie since October of 2005, when Gracie was eight months old, and the foster mom for J'Izaia since April of 2007. When Gracie was placed in foster care, she had a skull fracture, bronchitis, asthma, polyps on her bronchial tubes, and was developmentally delayed. When asked what Mother told her about Gracie's skull fracture, Ms. Tilley testified: "Many different times she's - had talked about how it happened, that she didn't do it, that it happened at a church nursery or that it happened at a friend's house that had been babysitting for her."

Ms. Tilley testified that since May of 2007, Gracie has exhibited aggressive behavior and had nightmares for a couple of days after visits with Mother. Ms. Tilley described Gracie's behavior stating that after a visit with Mother, Gracie:

would be real mean and aggressive to the other kids because I have an in-home day care. She would push them and she started biting and she'd push me away and then she would come to me and cry and say she was sorry, she didn't mean to. She would get up in my lap, but she wouldn't let the other kids in my lap. When Kenny [the foster dad] would come home, she would cling to him.

Mother testified at trial. Mother denied ever making the statements, among others, that she had married the judge's cousin and the judge told her he would not terminate her parental rights, that Chuckie H. had gutted her, that Chuckie H. had killed and buried two of her children, that any man she had been involved with was executed in prison, that she had attempted suicide twenty-six times, and that she had claimed multiple times to be pregnant by several different men since Gracie was taken into State custody.

Mother testified that she "took medicine the whole time both of my children were in custody." Mother also testified: "I've had difficulty with DCH [sic] not bringing my children there on visits and when I tell them that, you know, I'm there, I have to sit there for 30 minutes to an hour and then they don't even bring them. I go home crying." Mother testified that this has happened "[o]ver 40 times actually in the time my children have been in custody."

Thomas Biller, Ed.D., a clinical psychologist, evaluated Mother on January 25, 2006. Dr. Biller first did a clinical interview and then an assessment of validity to see how accurate and honest Mother's answers appeared to be. Dr. Biller testified:

The evaluation consisted of a series of tests to be administered. We used the Peabody Picture Vocabulary Test. That is a measure of intellectual ability that's verbally oriented. Then I did a projective test that's called the Hand Test and the Hand Test is a test that measures impulsivity, the ability to control one's responses of a negative nature and, of course, the Rorschach Inkblot Test, which is a projective test, and that is a measure of personality at somewhat a hidden level. By hidden level, I just mean that since the individual is not aware of how to respond to that item, they project onto it from within themselves and there are standard stimuli that they react to and so hundreds and actually thousands of other people have done that

and so there are patterns to look at, so you can get an idea of what sort of inner workings the individual has within their mind and personality.

And then from there, we went to a mental status assessment and a mental status merely gets at one's contact with reality. Is that person oriented to time, place, person. Are they aware of the purpose of their being present. And then we did a parenting stress inventory and that's an inventory that measures an individual's attitudes toward parenting and an attitude toward the particular children involved. And then there was a test that was used called the Minnesota Multiphasic Personality Inventory, the second edition and then the clinical diagnostic interview and those were the instruments that were used.

Dr. Biller diagnosed Mother with schizophrenia, paranoid type and testified:

Schizophrenia has a lot of delusional content to it and so in this situation, she was delusional about having a child. She seemed delusional about the extent of her injuries, so those findings would go along with a diagnosis of schizophrenia because schizophrenia is a psychotic disorder which means you have the potential for sensory experiences that are not based in reality or hallucinations and delusional experiences which are belief systems that are not based in fact.

When asked if he diagnosed Mother with other conditions such as post traumatic stress disorder, Dr. Biller testified:

the schizophrenia, paranoid type was the most powerful diagnosis and I didn't want to cloud the waters. So I just gave a simple diagnostic impression with one diagnosis and that one diagnosis of schizophrenia, paranoid type is pretty inclusive. Because you see, PTSD could have some of the same symptoms as well and so I didn't want to get off on that tangent because I thought schizophrenia, paranoid type was the diagnosis that would bring the best treatment for this individual.

Dr. Biller testified that Mother had a problem with providing accurate information and when asked why he stated:

It could be related to the diagnosis. In other words, if a person has a delusional disorder and she's trying to present herself as the victim, if you have a problem, if you have a little problem, you get a little sympathy. If you have a big problem, you get a larger amount of sympathy. So in this situation, she wanted to get her child back and she wanted to get the role of being a parent once again with this little child and she would want to present herself as being a victim of the system taking her child away from her unfairly. So if you have problems that are small, you'll get a little bit of sympathy and what she wanted was a great deal of sympathy and so that goes to the delusion. That goes to the extent of the problem.

When asked if he thought that Mother was purposely lying, Dr. Biller testified: “Well, at the time I think she believed what she was saying. That’s why the diagnosis of schizophrenia.” When asked about the fact that Mother gives different accounts of the same event, Dr. Biller testified:

If you have different accounts of the same event, too - - and I guess one way of saying it is playing to the audience. In other words, okay. Well, what audience am I in front of now? What is in my interest now with this audience or this person? And I believe that you’ve got the characters or the borderline personality, too, and the borderline personality also indicates that not only is the person capable of having the schizophrenia, but they’re also capable of having character problems where they manipulate and are capable of saying things that they think are in their own best interest. So you ask a question about, well, is it that she believed it was true or was she trying to manipulate? Well, I think it’s possible for some of both to be taking place. She was manipulating to try to present herself in such a way that she thought she would get sympathy and she would get her children or her child back.

On the other hand, there was a certain amount of bizarreness to her behavior which made me think that she actually believed some of her own thoughts that were actually contrary to reality.

When asked how oriented to reality Mother is, Dr. Biller stated: “Well, actually not a lot.”

Dr. Biller testified:

I would think that if in a year she was able to show consistent progress and she stayed on her medication and if in that year, she showed to be relatively symptom free, was making good decisions, her thoughts were not delusional, then she would be able to consider having the child returned. But she would have to have consistent ongoing treatment even with the child with her. The Department of Children’s Services would continue to have to monitor this and make visits in the home to assure the safety of the child.

Now, at this time, it’s been two years. It’s been two years since this evaluation. Now, [Mother] could have been in counseling. She could have been working on getting the right medication, getting the medications adjusted to where they would work. So by this time, if she had followed through with treatment, if she were going to improve, you would see adequate improvement.

Dr. Biller was asked what it would indicate to him if he were informed Mother had not been compliant with medications and counseling during the two years. He answered:

That would indicate to me that this is a chronic pattern that is not going to change and that since it’s a biological problem, by that, I mean, schizophrenia is a medical problem that is related to an imbalance of neurotransmitters in the brain, particularly

dopamine. It's not going to change by itself. So the problem will stay the same and perhaps get worse.

Dr. Biller was told that after he evaluated Mother, she married a man who is on the sex offender registry and that Mother was pregnant. Dr. Biller was asked how this new information would effect his professional opinion, and he stated:

That indicates, once again, that the diagnoses are still active. They would still stand. The borderline personality is still directing her life. She is making irresponsible choices. She is not learning from past experience, which is a characterological problem, goes along with the borderline personality disorder. She is still more concerned about being a parent than the correct type of parent. Her judgment is very disturbed or very distorted. So that shows me that she really hasn't availed herself to treatment and hasn't made appropriate changes, so the prognosis is even worse than before because she has not come to grips with the knowledge and she has not followed through with appropriate treatment to overcome the problems and that means that there are two more years going by with the same pattern of behavior which merely entrenches the problem and makes it more likely to continue in the future.

In Dr. Biller's opinion, Mother is not capable of safely parenting and is "[s]everely mentally impaired." Dr. Biller testified that Mother's problem is "a biological problem. It's not one that's cured. It's one that managed. And if she hasn't been managing it properly, that indicates that she's still functioning within the diagnosis range that I gave...." Dr. Biller testified that in his opinion Mother is a danger to herself and others if she is not properly medicated and in treatment.

Dawit Zemichael, M.D. has treated Mother for approximately three years. Dr. Zemichael diagnosed Mother with:

bipolar disorder, most recent episode mixed, unspecified, bipolar one disorder, which is mixed, meaning manic and depressive symptoms....And she had also panic disorder without agoraphobia on Axis I, cannabis abuse, alcohol abuse, bulimia nervosa that was - - I was trying to - - bulimia nervosa, eating disorder. That was carried on from 2002, but she denied it, you know, when I saw her. Really that was just - - we'll say that was in remission. It was actually in remission....Axis II, she was borderline personality disorder. Axis III, slightly obese, Axis IV, psychosocial stressors, problems psychosocially. Her general level of function, GAF, global assessment of function was 45, which was not so low or so high. In other words, she was not hospital material or a hospital type person.

Dr. Zemichael testified that Mother was noncompliant by not showing up for her scheduled appointments. Dr. Zemichael also testified that Mother reported false pregnancies. When asked if Mother could safely parent a child, Dr. Zemichael stated:

It's very questionable. You know, our responsibility is to try to get the patients better - - ...and you want to be on their side to be able to get - - you know, get what they want. If they want to go to school, you want them to be able to go to school, get along or whatever. If they're a parent, you want to make sure they get reunited. In her case, it's very questionable.

Dr. Zemichael testified: "I have not seen a whole lot of really progress." Dr. Zemichael stated that if Mother is not pregnant she should never be off her medications "[a]s long as she has that diagnosis of bipolar." When asked if it would make any difference in what he prescribed whether Mother were bipolar versus schizophrenic, Dr. Zemichael testified: "No, no, because she's still getting the antipsychotics to treat. Right now, you know, in psychiatry, we have medications that treat both, same medicine." Dr. Zemichael prescribed Risperdal for Mother "[b]ecause even if it was schizophrenia, the Risperdal would take care of that."

After trial, the Juvenile Court entered an order on September 11, 2008, finding and holding, *inter alia*:

6. As to Respondent [Mother], Petitioner alleged four (4) grounds for termination of her rights to Gracie - - ***Abandonment by failure to provide a suitable home T.C.A. 36-1-113(g)(1) and 36-1-102(1)(A)(ii); Substantial non-compliance with the permanency plan T.C.A. 36-1-133(g)(2) [sic] and 27-2-403(a)(2)]; Persistent conditions T.C.A. 36-1-113(g)(3), and, Mental incompetence T.C.A. 36-1-113(g)(8). As to J'Izaia, only the ground of mental incompetence, is alleged.***

As to these grounds alleged as to Gracie, the Court makes the following findings of facts and conclusions of law:

- a. [Mother] testified that she has mental illness. The Court finds that her mental illness is the core and crux of this whole case.
- b. Depositions of three (3) mental health experts were entered into proof. Dr. Thomas Biller,...who performed a psychological examination and parenting assessment in January 2006, diagnosed [Mother] with Axis I-schizophrenia paranoid type and on Axis II, borderline personality disorder with active delusions. In his deposition testimony of January 2008, he stated on page 40, regarding her current condition, he stated his diagnoses are still active and that without intervention, her mental and emotional health and personality characteristics will not change and are likely to worsen.

Dr. Zemichael, [Mother's] treating psychiatrist, who testified by deposition...had a slightly different diagnosis. His Axis I diagnosis is bi-polar disorder and he agrees with Dr. Biller's Axis II diagnosis of borderline personality disorder. He also diagnosed her with delusional disorder, which also corresponds with Dr. Biller's findings. He further noted that [Mother] had been prescribed some 13 different medications over the course of his treatment and that three (3) of those, Ability [sic], Zyprexa and Risperdal, would be used to treat both schizophrenia and

bi-polar disorder. Dr Zemichael testified that [Mother] had been noncompliant with the medication and counseling, and that it is not likely that she is going to be compliant in the future. He stated her ability to parent is very questionable.

Ms. Hartgrove-Thomas, a licensed psychological counselor, testified that she diagnosed [Mother] as bi-polar.

The third deposition...was from Mr. Gawrysiak, a doctoral student at UT Psychology Clinic, who performed another psychological examination of [Mother]. His Axis I diagnosis differed from the other two, but he also noted a personality disorder, not otherwise specified. He noted that some of the tests were invalid due to the way [Mother] responded. The Court did not rely on his testimony to any significant extent, but gave more credit to the depositional testimony of Drs. Biller and Zemichael.

c. Testimony of other witnesses confirmed that there had been little improvement in [Mother's] condition during the time Gracie and J'Izaia have been in custody, despite provision of a number of services and attempts by DCS and other social service providers.

Case Manager Chadwell testified that during the two years she worked with [Mother] there was no safe home provided, that counseling had been inconsistent and that [Mother] has not been compliant with her medication therapy. Having observing [sic] numerous visitations between [Mother] and her children, Ms. Chadwell testified that [Mother] still shows little understanding of childhood development or appropriate interaction and appears almost overwhelmed when both children are at visits.

Family Menders therapeutic visitation specialist, Deanna Cookston, who supervised over 30 visitations, testified that during visits [Mother] concentrated on little things like wanting to feed the children or worrying about diapering, but avoided bonding interactions such as directly playing with Gracie. [Mother] did not implement parenting suggestions Ms. Cookston gave her and at times became angry with her. Ms. Cookston testified that [Mother] showed very little improvement and that it is uncertain whether any improvement could be made.

DayStar counselor Debra Grant testified that she counseled with [Mother] for 7 months, at the end of which she felt like [Mother] had not benefited [sic] from the counseling.

Every person who testified, Ms. Grant, Ms. Chadwell, Ms. Cookston, Ms. Mayer, the foster mother and Ms. King, all discussed various bizarre statements [Mother] made over time. The Court made a long list of statements which, even without disproof, are completely unbelievable and [Mother] continued to make such incredulous statements, to the present time.

d. The Court specifically noted testimony that on more than one occasion since the children have been in custody, [Mother] refused to take her medication or discontinued medication Dr. Zemichael prescribed because she claimed to be pregnant when she actually was not. The recommended medications to treat the mental issues would potentially cause risk to the unborn fetus and were therefore discontinued when she stated she was pregnant. Her delusions of pregnancy prevented proper treatment to address her mental health conditions and it became a vicious cycle.

Drs. Biller and Zemichael and professional counselor Ms. Hartgrove-Thomas stated that before there is a significant improvement in [Mother's] mental health status, but [sic] she must have long-term therapeutic counseling and medication therapy, neither of which [Mother] had been compliant with during the past three (3) years.

e. At the close of Petitioner's proof Respondent made a motion to dismiss based on the theory that since the last court date in May, [Mother] gave birth and that DCS had not removed that child at this point in time, and therefore, grounds to terminate on Gracie and J'Izaia can not be proven. Testimony was that DCS has an open case and entered into a plan with the family including the husband and another caregiver, to supervise [Mother] and the infant. At this point in time, reasonable efforts are being made by DCS to prevent removal. The Court does not find this negates the case as to J'Izaia and Gracie and accordingly overruled the motion.

Based on the above recited findings of fact, the Court concludes the proof is overwhelmingly clear and convincing that during the almost three (3) years Gracie has been in custody, [Mother] abandoned the minor child by failure to provide a suitable home, despite the reasonable efforts of DCS to assist her...; that she failed to substantially comply with the permanency plan requirements which were reasonable and related to remedying the circumstance which necessitated foster care...; and that the conditions that caused Gracie to be taken into custody or other conditions that in all reasonable probability would cause the child to be subjected to further abuse and neglect and that prevent the child's safe return to the parent still persist and there is little likelihood they will be remedied in the near future.... Except for her mental health issues, the Court believes [Mother] probably would have taken care of the problems so those grounds would not exist. However, the mental health issues are the overriding condition which prevents her from correcting those problems. The final ground alleged for termination of [Mother's] rights to Gracie, and the only alleged ground as to J'Izaia, is mental incompetence as defined by T.C.A. 36-1-113(g)(8), which states,

"The parent is incompetent to adequately provide for the further care and supervision of the child because the parent['s] or guardian's mental condition is presently impaired and is so likely to remain so that it is unlikely that the parents or guardian will be able to assume

or resume the care of and responsibility of the child in the near future...”

The record is replete with proof that [Mother’s] mental illness has prevented her from providing care for these children in the past, that it still does so today. According to the expert testimony by Drs. Biller and Zemichael and that of Ms. Thomas, it is unlikely that this condition can be eliminated in the near future. Wherefore, the Court finds clear and convincing evidence has been presented that [Mother] is mentally incompetent as defined by statute, which constitutes grounds for termination of her rights as to Gracie [H.] and J’Izaia [H.].

7. Having found four (4) grounds for termination of parental rights of [Mother], the Court considered whether it is in the best interests of either child for [Mother’s] rights to be terminated and found that clear and convincing proof was presented that [Mother] has not made an adjustment of circumstance, conduct or conditions to make it safe and in the children’s best interest to be in her home. Despite reasonable efforts by social service agencies for almost 3 years, [Mother] has failed to effect a lasting adjustment, largely due to her mental health issues.

[Mother] maintained regular visitation with the children, and the Court believes she does love the children. There was testimony of a relationship between Gracie and [Mother], but it is not an overwhelming or overriding relationship. There is little relationship between her and J’Izaia due to his removal soon after his birth. J’Izaia has been out of the home since birth and the foster home is the only home he has known. Gracie has been out of the home since she was 8 months old, and in the same foster home for almost 3 years. The effect a change of caretakers and physical environment would have on the children’s emotional, psychological and medical health would be negative, and that is a factor favoring termination.

There has been no proof as to brutality or abuse and the court considers that a neutral ground.

As to the [sic] whether the physical environment is healthy and safe, whether there is criminal activity in the home, the Court finds no proof that concerns exist at this time. When [Mother] was with Mr. [H.], there was drug usage and domestic abuse. Although her current husband is on the sex offender registry due to a prior statutory rape conviction, the Court does not find that to be a significant factor favoring termination.

There has been no proof as to child support payments by [Mother] so that is not a consideration.

As previously discussed, whether the mother’s mental and emotional status would be detrimental to the child and prevent her from effectively providing safe and stable care and supervision is the crux of the case. The mental health professionals’

diagnoses and prognosis are that [Mother's] unresolved mental health problems clearly have and continue to be the biggest barrier to reunification with the children. This factor weighs in favor of termination.

Weighing all the best interest factors set out in T.C.A. § 36-1-113(i), the recommendations of the Guardian ad-Litem favoring termination, and the statutory provisions at the very beginning of Title 36, - - T.C.A. § 36-1-101(d) – which provides that,

“In all cases when the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and best interest of the child, which interests are hereby [sic] recognized as constitutionally protected and, to that end, this part shall be liberally construed,”

the Court finds that the Department has proven by clear and convincing evidence that it is in the best interest of these children that [Mother's] rights be terminated and that the custody, control and full guardianship of Gracie [H.] and J'Izaia [H.]...should be awarded to the State of Tennessee, Department of Children's Services.

Mother appeals the termination of her parental rights to Gracie and J'Izaia to this Court.

Discussion

Although not stated exactly as such, Mother raises six issues on appeal: 1) whether the Juvenile Court erred in terminating Mother's parental rights to Gracie pursuant to Tenn. Code Ann. § 36-1-113(g)(1); 2) whether the Juvenile Court erred in terminating Mother's parental rights to Gracie pursuant to Tenn. Code Ann. § 36-1-113(g)(2); 3) whether the Juvenile Court erred in terminating Mother's parental rights to Gracie pursuant to § 36-1-113(g)(3); 4) whether the Juvenile Court erred in terminating Mother's parental rights to Gracie and J'Izaia pursuant to § 36-1-113(g)(8); 5) whether the Juvenile Court erred in finding and holding that it was in Gracie's and J'Izaia's best interest for Mother's parental rights to be terminated; and, 6) whether DCS made reasonable methods to reunite Mother with the children.

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights stating:

This Court must review findings of fact made by the trial court *de novo* upon the record “accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.” Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In*

re Valentine, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Department of Children's Services v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights stating:

It is well established that “parents have a fundamental right to the care, custody, and control of their children.” *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). “However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute.” *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c).

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 Tenn. App. LEXIS 941, at **16-17 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*. Clear and convincing evidence supporting any single ground will justify a termination order. *E.g., In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

We begin by addressing whether the Juvenile Court erred in terminating Mother's parental rights to Gracie pursuant to Tenn. Code Ann. § 36-1-113(g)(1). As pertinent to this issue, Tenn. Code Ann. § 36-1-113(g)(1) provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

Tenn. Code Ann. § 36-1-113(g)(1) (2005). In pertinent part, Tenn. Code Ann. § 36-1-102 provides:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, “abandonment” means that:

* * *

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child’s situation prevented reasonable efforts from being made prior to the child’s removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parents(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;...

Tenn. Code Ann. § 36-1-102 (1) (2005).

The Juvenile Court found and held that clear and convincing evidence existed that Mother had failed to provide a suitable home for Gracie despite reasonable efforts on the part of DCS. The record is replete with evidence that preponderates in favor of this finding. Testimony of both Ms. Mayer and Ms. Ackaouy show that Mother’s home was physically unsuitable, and testimony from numerous witnesses show that Mother continues her pattern of involvement with men with criminal histories, whom Mother allows into her home. Given this and all of the other evidence as discussed more fully above, we hold that the Juvenile Court did not err in terminating Mother’s parental rights to Gracie pursuant to Tenn. Code Ann. § 36-1-113(g)(1).

Next we consider whether the Juvenile Court erred in terminating Mother’s parental rights to Gracie pursuant Tenn. Code Ann. § 36-1-113(g)(2). As pertinent to this issue, Tenn. Code Ann. § 36-1-113(g)(2) provides that parental rights may be terminated upon clear and convincing evidence that: “There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4.” Tenn. Code Ann. § 36-1-113(g)(2) (2005).

The evidence shows, and the Juvenile Court found and held, that while Mother may have completed some of the tasks on the Perm Plan, Mother failed to complete the most critical tasks of remaining on her medications, attending counseling and treatment appointments, and becoming

stable on her medications. In fact, the evidence is clear and convincing that Mother deliberately refused to take her medications. The evidence does not preponderate against the Juvenile Court's findings that clear and convincing evidence existed to terminate Mother's parental rights to Gracie under Tenn. Code Ann. § 36-1-113(g)(2).

We next consider whether the Juvenile Court erred in terminating Mother's parental rights to Gracie pursuant to Tenn. Code Ann. § 36-1-113(g)(3). As pertinent to this issue, Tenn. Code Ann. § 36-1-113(g)(3) provides that parental rights may be terminated upon clear and convincing evidence that:

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3) (2005).

The Juvenile Court found and held that clear and convincing evidence existed to terminate Mother's parental rights to Gracie under Tenn. Code Ann. § 36-1-113(g)(3). The record reveals that Mother's mental condition has not changed during the time that Gracie has been in State custody. Dr. Biller and Dr. Zemichael agree that Mother's mental condition is unlikely to change given her lack of compliance with medication therapy and counseling. In addition, the record reveals that not only has Mother continued her pattern of becoming involved with men with criminal histories, but now Mother has married a man who is a registered sex offender. Given this, in addition to the other evidence in the record as discussed more fully above, we find and hold that the evidence does not preponderate against the Juvenile Court's findings that clear and convincing evidence existed to terminate Mother's parental rights under Tenn. Code Ann. § 36-1-113(g)(3).

Next, we consider whether the Juvenile Court erred in terminating Mother's parental rights to Gracie and J'Izaia pursuant to Tenn. Code Ann. § 36-1-113(g)(8). In pertinent part, Tenn. Code Ann. § 36-1-113(g)(8) provides:

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further

care and supervision of the child, and to terminate that parent's or guardian's rights to the child.

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future, and

(ii) That termination of parental or guardian rights is in the best interest of the child.

(C) In the circumstances described under subdivisions (8)(A) and (8)(B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated.

Tenn. Code Ann. § 36-1-113(g)(8) (2005).

The evidence in the record on appeal shows that despite reasonable efforts by DCS to assist Mother in obtaining treatment for her mental illness and reasonable efforts by DCS to make Mother understand the importance of complying with a treatment regimen including medications and counseling, Mother's mental condition remains so impaired that she is unable to care for Gracie and J'Izaia. Ms. Grant, who counseled Mother on a reasonably regular basis for approximately eight months, testified that it was her opinion that Mother did not benefit from the counseling. In addition, both Dr. Biller and Dr. Zemichael agreed that Mother's condition is such that she is so mentally impaired that she is unable to care for the children at this time and that there is little likelihood that this condition will change in the future. The evidence does not preponderate against the Juvenile Court's findings that clear and convincing evidence existed to terminate Mother's parental rights to Gracie and J'Izaia pursuant to Tenn. Code Ann. § 36-1-113(g)(8).

Having determined that grounds for termination were proven by clear and convincing evidence, we turn now to the issue of whether the Juvenile Court erred in finding and holding that it was in Gracie's and J'Izaia's best interest for Mother's parental rights to be terminated. The Juvenile Court specifically "found that clear and convincing proof was presented that [Mother] has not made an adjustment of circumstance, conduct or conditions to make it safe and in the children's best interest to be in her home." We need not reiterate the evidence discussed more fully above which supports this finding. As the evidence does not preponderate against the Juvenile Court's findings relative to this issue, we affirm the holding that it was in Gracie's and J'Izaia's best interest for Mother's parental rights to be terminated.

Finally, we consider whether DCS made reasonable efforts to reunite Mother with the children. As this Court stated in *State of Tennessee, Department of Children's Services v. S.M.D.*:

The State “must make reasonable efforts to preserve a family before seeking to terminate parental rights.” *In re: Jeremy D. and Nathan D.*, No. 01-A-01-9510-JV-00479, 1996 Tenn. App. LEXIS 292, at **7-8, 1996 WL 257495, at *3 (Tenn. Ct. App. May 17, 1996), *no appl. perm. appeal filed*. However, “[r]eunification of a family is a two-way street, and the law does not require DCS to carry the entire burden of this goal.” *In re: R.C.V. and O.V.*, No. W2001-02102-COA-R3-JV, 2002 Tenn. App. LEXIS 811, at *39, 2002 WL 31730899, at *11 (Tenn. Ct. App. Nov. 18, 2002), *no. appl. perm. appeal filed*.

State of Tennessee, Department of Children’s Services v. S.M.D., 200 S.W.3d 184, 197-98 (Tenn. Ct. App. 2006).

Mother argues, in part, that DCS failed to make reasonable efforts because “DCS should have ensured her treating doctor, Dr. Zemichael, was treating Dr. Biller’s diagnosis...,” which was different from Dr. Zemichael’s diagnosis. However, Dr. Zemichael testified that several of the medications which he prescribed for Mother would treat both bipolar, which Dr. Zemichael diagnosed, and schizophrenia, which Dr. Biller diagnosed. Even if Dr. Zemichael had been notified of Dr. Biller’s diagnosis, this notification would not have changed the fact that Mother was noncompliant with treatment. The evidence shows that Mother refused to take her medications. The evidence also shows that Mother claimed she was pregnant on several occasions when she was not, a claim which caused Dr. Zemichael to order the medication stopped to prevent possible harm to a fetus. The evidence shows that DCS, Dr. Biller, and Mother’s attorney met with Mother in an attempt to explain to Mother Dr. Biller’s diagnosis and the importance of compliance with her treatment regimen. The evidence also shows that DCS tried to explain to Mother the importance of her being medication compliant, but that Mother flatly refused to take her medications. Further, the evidence shows that Mother also was noncompliant with attending counseling, which Ms. Thomas, the psychotherapist who met with Mother, testified could have provided some benefit even if a patient were noncompliant with a medication routine.

Reunification is a two-way street and the evidence shows that Mother did not make an effort to carry her portion of this burden. The Juvenile Court found and held that DCS had made reasonable efforts to reunite Mother with Gracie and J’Izaia. The evidence does not preponderate against this finding.

Given all of the above, we affirm the Juvenile Court’s September 11, 2008 order terminating Mother’s parental rights to Gracie H. and J’Izaia H.

Conclusion

The judgment of the Juvenile Court is affirmed, and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Christina H., and her surety, if any.

D. MICHAEL SWINEY, JUDGE